A.F.R.

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench : Hon'ble Shri Vijay Kumar Shrivastava, J.

Misc Appeal No.1183 of 2003

Appellant — Surendra Singh, S/o Sufal Ram, Caste Gond, aged about 25 years, Occupation Agriculture & Labour, R/o Village Annapurna, PS Premnagar, Tahsil Surajpur, Distt- Surguja (CG)

Versus

Respondents :

1. Sanjay Toppo, S/o Imanuel toppo, aged about 30 years, R/o Village Kanchanpur, PS Premnagar, Tah.Surajpur, Distt.Surguja (CG) (Driver)

2. (A) Dharmsahay Toppo, S/o Late Imanuel Toppo, aged about 55 years, R/o Village Sarga, PS Sitapur, Distt- Surguja (CG)

   (B) Niranjan Kumar Toppo, S/o Late Imanuel Toppo, aged about 45 years "Dy.Jailer" Bilaspur (CG)

   (C) Sanjay Toppo, s/o Late Imanuel Toppo, aged about 30 years, R/o Village Kanchanpur, Distt.Surguja (CG)

Present :- Shri Ashok Kumar Shukla, counsel for the appellant.

Shri Uttam Pandey, counsel for the respondents.

ORAL ORDER

(Passed on 16.01.2007)

This appeal under Section 173 of Motor Vehicle Act, 1988 (henceforth "the Act") has been filed against the award dated 15.10.2003 passed by VIth Additional Motor Accident Claim Tribunal, Surguja

(20)

(henceforth "the Tribunal") vide which claim of the appellant for compensation award has been rejected.

2) Briefly stated facts for disposal of this appeal are that on 18.10.2001 when appellant was alighting from tractor bearing No.MP27-B/4875, respondent No.1, who was driving the tractor, negligently drove the vehicle; as a result appellant fell down and sustained several injuries, including fracture on his right thigh. He assessed the claim to the tune of Rs.5,00,000/- and for compensation award, filed application under Section 166 of the Act against the owner and driver of the offending vehicle.

3) Claim was contested by respondents *inter alia* on the ground that on 18.10.2001, the offending tractor was not in use but was lying idle. Appellant on that day while working in bolder mines sustained injuries as a result of fall of a bolder.

4) In support of their case, both the parties adduced evidence. Learned Tribunal after appreciating the evidence recorded finding that claimant failed to prove that he sustained injuries on account of accident caused by respondent No.1 - Sanjay Toppo by driving tractor bearing No.MP - 27 - B 4875 and trolley No.27 - B /4876 in a rash and negligent manner, therefore, dismissed the claim.

5) Surendra Singh (AW-1) and his cousin Rudraprasad (AW-3) in their evidence stated that when Surendra Singh was alighting from the tractor, Sanjay Toppo suddenly plied the tractor, therefore, Surendra Singh fell down and his thigh was ran over by the trolley wheel. On the other hand, in rebuttal, Sanjay Toppo (NA/1), Ramlal Singh (NA/2), Sahadev Singh

(NA/3), in their statements have stated that Surendra Singh sustained injuries, as a result of fall of a heavy stone on his right thigh.

6) At the time of admission in the hospital, injured Surendra Singh (appellant) gave a history of fall of stone and this fact has been corroborated with claimant's document and even statement of Surendra Singh (appellant). The story of ran over by the wheel of trolley has been introduced by the appellant for the first time in evidence, without there being any such pleading. Although after a long period; on 22.11.2001 report was made but there also the story of run over by wheel of trolley has not been unveiled.

7) It is manifest that evidence advanced by respondent was corroborated from various corners, whereas evidence adduced by the appellant suffers from serious infirmities, therefore, learned Tribunal correctly dis-believed such feeble evidence adduced by the claimant, and accepted the evidence of opposite party. From the above facts and circumstances, it is clear that Tribunal after due appreciation of legal evidence has recorded its finding which is neither illegal nor incorrect.

8) In the result, the appeal being devoid of substance, is liable to be dismissed; and is accordingly dismissed. No costs.

Sd/-
V.K. Shrivastava
Judge

padma